

Legislative Amendments to Consumer Credit Laws in Malaysia

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I. Introduction

Consumer credit is a branch of commercial law developed in recent years. Today, as the cost of living in daily life has increased there will certainly be a need to borrow money, especially for the lower and middle income classes. Although the services provided by lenders do help the borrowers to temporarily solve their financial problems, there should be safeguards for such transactions. This is due to the fact that there are lenders who take advantage of the borrowers, especially the desperate ones. This situation has urged demands to enhance protection under the consumer credit laws. The legislature has recently reacted to such demands by amending statutory provisions regarding consumer credit. The main amendments involved the Pawnbrokers Act 1972¹ and Moneylenders Act 1951.² The amendments were made to strengthen the regulation and control for both transactions by way of licensing, law enforcement powers and also the law regarding evidence in trial. There was also an amendment made to the Hire-Purchase Act 1967³ which relates to variable term charges. The purpose of this paper is to summarise the recent amendments to the consumer credit laws and to highlight its significance.

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¹ Act 81.

² Act 400.

³ Act 212.

II. Pawnbrokers Act 1972

Pawnbroking is a transaction where a pawner⁴ surrenders a pledge⁵ to the pawnbroker as security for a cash loan. The pawnbroker is entitled to hold the pledge until the pledge is redeemed or repurchased. In Malaysia, pawnbroking transactions are governed by the Pawnbrokers Act 1972. The Act came into force on 2 January 1973. Generally, the purpose of the Act is to standardise the law of pawnbroking in this country and its provisions are to be read together with the Pawnbroking Rules 1972. The Pawnbrokers Act governs all pawnbroking transactions unless it is excluded by the Act itself.⁶

A. *Pawnbrokers (Amendment) Act 2003*

The Pawnbrokers Act was amended by the Pawnbrokers (Amendment) Act 2003 (Act A1209).⁷ The amendments came into force on 1 January 2004 and the principal Act was amended by substituting for the long title the following long title:

An act for the regulation and control of the business of pawn broking, the protection of pawners and pledges pawned in course of such business, and matters connected therewith.

The new long title has clearly shown the intention of the legislature to improve the protection for pawnbroking transactions. Section 3(1) was amended where the maximum amount of pawnbroking transaction covered by Act is now RM10,000 instead of RM5,000.⁸

⁴ According to s 2 "pawner" means a person delivering an article for pawn to a pawnbroker.

⁵ According to s 2 "pledge" means any tangible personal property, other than choses-in-action, titles, securities or documents evidencing indebtedness, which is deposited or delivered into possession of a pawnbroker.

⁶ The Pawnbrokers Act 1972 is enforced by the Ministry of Housing and Local Government.

⁷ Act A1209.

⁸ However sub-s (2) of s 3 has been repealed. Therefore the Act will regulate all pawnbroking transactions under RM10,000.

This amendment not only increased the loan amount that could be given to the pawner, but it also gives better value to the pledge. Moreover, the amendment has widened the application of the Pawnbrokers Act and its protection. Under the new amendment, the minimum age for the pawner is now changed from 16 to 18 years old. This amendment is important since the capacity to enter into a contract in Malaysia is 18 years old.⁹ Thus it would have been unsuitable to allow a 16 year-old to pawn articles in a pawnshop.

The amendment to the Pawnbrokers Act appears to emphasise more on licensing, whereby most of the provisions relating to licensing were amended. Section 7 of the Act has been replaced with a new provision.¹⁰ Section 8, regarding application for licence, has also been amended. There is also a new s 8A which relates to the circumstances under which a licence shall not be granted. Previous provisions under ss 9 and 10 have been replaced with new provisions relating to the power of the Registrar to grant a licence and the duration of the licence. In the past, an application for a licence is based on calls for tenders, it is now by way of open application. The duration for a licence has been reduced from three years to two years and this is for the purpose of supervision. Three new sections were introduced, being s 10A (on conditions that may be attached to licence), s 10B (on renewal of licence) and s 10C (on requirement to display licence).

Section 11 which concerns the revocation and suspension of licences and is also given new contents. According to the new s 11(1)(a), the Registrar may revoke the licence issued or suspend the licence if the licensee, in the opinion of the Registrar, has been carrying on his pawnbroking business in a manner detrimental to the interest of the pawner or to any member of the public. Seven more new sections regarding licensing have been introduced, which are, s 11A (on opportunity of being heard), s 11B (on appeal to Minister), s 11C (on validity of licence extended in successful appeal), s 11D (on prohibition

⁹ Section 11 Contracts Act 1950 and also s 2 of the Age of Majority Act 1971.

¹⁰ Section 7(1) now reads "No person shall carry on business as a pawnbroker unless he holds a valid license granted under this Act".

of similar application when an earlier application is still pending appeal), s 11E (on surrender of licence), s 11F (on transfer or assignment of licence prohibited) and s 11G (on duty of pawnbroker on expiry of licence). A new provision is introduced in relation to advertisement by the licensee. According to s 13B, no advertisement regarding the business of pawnbroking is allowed unless an advertisement permit has been granted by the Registrar.¹¹ An application for an advertisement permit shall be made to the Registrar in the prescribed form.¹²

A new provision under s 22 imposes more responsibilities on pawnbrokers regarding the pledge.¹³ According to s 22(3), the value of the pledge for the purposes of the compensation of the pawner is assumed to be one quarter more than the amount of the loan thereon. A new s 23 states that any pledge if pawned for a sum not exceeding RM200 shall become the property of the pawnbroker if the pledge is not redeemed at the expiration of six months from the date of pawning or such longer period as may be agreed between a pawnbroker and the pawner. Unfortunately the amendment to s 23 would deny the pawner a right to redeem the pledge since the amount for the provision has been increased from RM100 to RM200. If this happens, it means that the pawner is not entitled to claim the surplus if the pledge has been sold for more than the amount of the loan.¹⁴ Somehow, the provisions under the Pawnbrokers Act only takes into account the amount of the loan and not the value of the pledge. Thus if the pawner borrows only RM200 or less but the value of his pledge is higher than RM200, the pawner will suffer losses if he is unable to redeem or forgets to redeem the pledge.

¹¹ According to s 13B, any person who contravenes sub-s (1) commits an offence and shall on conviction be liable to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding 12 months or to both.

¹² Section 13C Act 1209.

¹³ Section 22(2) states: The pawner shall be responsible for the loss or damage of any pledge, whether such loss or damage be caused by or in consequence of fire, negligence, omission, theft, robbery or otherwise.

¹⁴ Under s 25 where a pledge pawned for a sum exceeding RM200 is sold more than the amount of the loan, the pawnbroker shall pay the surplus to the pawner if a claim is made by the pawner within the period of four months.

The most significant part of the 2003 Amendment is that it has introduced new provisions relating to investigation, search, and arrest. These powers are in Part IVA, which contains eleven new sections, being ss 34A to 34K. Briefly s 34A is about the power to investigate complaints and inquire into information. Here, any complaint relating to committing of an offence under this Act may be made orally or in writing to an Inspector¹⁵ or police officer¹⁶ and where a complaint is made orally, it shall be reduced into writing. Section 34B deals with the powers of an Inspector or police officer in carrying out investigations. Such powers given to the enforcement officers are important for them to acquire information. Section 34C is about the power to examine persons. Under s 34D, a Magistrate may issue a warrant authorising an Inspector or police officer to enter any premises and if the Inspector or police officer in any circumstances has reasonable cause to believe that by reason of delay in obtaining a search warrant, the investigation would be adversely affected, they may enter the premises as if they were authorised to do so by a warrant issued under s 34D. Section 34F deals with the seizure of moveable property. Under this provision, in the course of investigation the Inspector or police officer may seize any moveable property which he has reasonable grounds to suspect to be related to the commission of an offence under the Act. Section 34G is a further provision relating to seizure of moveable property and s 34H is about the release of property seized. Under s 34I(1), any person who obstructs the inspection and search by the Inspector or police officer commits an offence and shall on conviction be liable to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding 12 months or to both.¹⁷ According to s 34J, every offence punishable under this Act shall be a seizable offence and an Inspector may arrest without warrant any person committing an offence under

¹⁵ According to s 2 "Inspector" means the Inspector of Pawnbrokers under sub-s 3A(1).

¹⁶ According to s 2 "police officer" means a senior officer as defined in the Police Act 1967 (Act 344).

¹⁷ Sub-section (2) of s 34I states that any person who abets the commission of any offence under sub-s (1) shall be guilty of an offence and shall be liable

this Act. Lastly under s 34K, an Inspector when acting under this Part shall on demand declare his office and produce written authorisation authorised by the Registrar.

Meanwhile ss 34L to 34O in Part IVB deal with evidence in court. Section 34L provide for evidence of an accomplice and agent provocateur which protects the person from being regarded as an accomplice. Section 34M is about the protection of informers and information. Section 34N concerns the admissibility of statements by accused persons and lastly s 34O provides that a copy of a licence certified by the Registrar to be a true copy of such licence and shall be admissible as evidence. Section 41A has introduced a general penalty for any offences under the Act for which no penalty has been expressly provided, whereby on conviction the accused shall be liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding six months or to both.

Under the new amendment it will be an offence for any person who purchases or attempts to purchase any pawn-ticket.¹⁸ Such offence shall be liable on conviction to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding 12 months. Even though amendments were made to the Pawnbrokers Act 1972, pawnbroking transactions still has the highest interest rates compared to other consumer credit transactions. Under the Pawnbroking Rules 1972, the interest rate for pawnbroking transaction is at 2% a month.¹⁹ Therefore, it is suggested that the interest rate under the Pawnbroking Rules be revised in the future.

to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding 12 months or both. Sub-s (3) states that any person who, while committing or abetting the commission of any offence under sub-ss (1) or (2) causes hurt to a police officer or any public officer shall be liable to whipping.

¹⁸ Section 41(C).

¹⁹ The average interest rate for pawnbroking transaction is 24% per annum. According to the Hire-Purchase (Terms Charges) Regulations 1968, the terms charges in relation to a hire-purchase agreement shall not exceed 10% per annum. Under the new s 17A of the Moneylenders Act 1951, the interest for secured loan shall not exceed 12% per annum and interest for unsecured loan shall not exceed 18% per annum.

III. Moneylenders Act 1951

The Moneylenders Act 1951 (Act 400)²⁰ is modeled upon the English Moneylenders Act 1900 and 1927. Act 400 applies only to the States of West Malaysia.²¹ The Ministry in charge of the enforcement of the Act is the Ministry of Housing and Local Government.

A. *Moneylenders (Amendment) Act 2003*

Act 400 was amended by the Moneylenders (Amendment) Act 2003 (Act A1193).²² Act A1193 came into force on 1 November 2004. Act A1193 has introduced new provisions regarding investigation, search and also evidence. Amendments to Act 400 were introduced just after the amendments to the Pawnbrokers Act were made and the purpose of the amendments are almost similar, that is to strengthen the existing laws by way of licensing and enforcement. As the Pawnbrokers Act 1972, the long title for the Moneylenders Act 1951 was also amended by substituting for the long title the following long title:

An Act for the regulation and control of the business of moneylending, the protection of borrowers of the monies lent in the course of such business, and, matters connected therewith.

Under s 2, a new definition has been given to a moneylender.²³ There is also a definition for moneylending agreement.²⁴ Sections

²⁰ Act 400.

²¹ Section 1(2).

²² Act A1193.

²³ Section 2 of Act A1193 defines a "moneylender" as any person who lends a sum of money to a borrower in consideration of a larger sum being repaid to him.

²⁴ Section 2 of Act A1193 defines a "moneylending agreement" to mean an agreement made in writing between moneylender and a borrower for the repayment, in lump sum or instalments, of money borrowed by the borrower from the moneylender.

2A(h)²⁵ and 3 of the Act which covered the definition of a moneylender were repealed.²⁶ Section 5 which related to the requirement for a moneylender to obtain a licence has been replaced with a new provision.²⁷ Section 5(2) imposes a penalty on any person who carries on business as a moneylender without a licence with a fine of not less than RM20,000 or imprisonment for a term not exceeding five years or both and in the case of a second or subsequent offence, shall also be liable to whipping. There are new sections for licensing that were introduced, namely s 5A (on application for licence), s 5B (on grant of a licence), s 5C (on duration of licence), s 5E (on conditions attached to licence) and s 5F (on renewal of licence). All these provisions were introduced to supervise the application for the licence. The new s 9 concerns the circumstances under which licenses shall not be issued. Six new sections were introduced, being ss 9A, 9B, 9C, 9D, 9E and 9F. These sections relate to matters of revocation or suspension of licence, opportunity of being heard, appeal to the Minister, validity of licence extended in successful appeals, prohibition of subsequent application pending appeal on earlier application and surrender of licence. Under s 9G, the transfer or assignment of licence is prohibited except with the prior written consent of the Registrar.

For the purposes of enforcement of the Moneylenders Act, new provisions were introduced relating to the powers of investigation, search, and arrest of the police. These sections are s 10A (on powers of Inspector or police officer in investigation), s 10B (on power to investigate complaints and inquire into information), s 10C (on power to examine persons), s 10D (on search by warrant), s 10E (on power of arrest), s 10F (on search without warrant), s 10G (on seizure of

²⁵ According to s 2A(1)(h) which has been repealed, "the Act shall not apply to any person bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money".

²⁶ The repealed s 3 provided for "Certain persons and firms presumed to be moneylenders".

²⁷ Section 5(1) provides that: "No person shall conduct business as a moneylender unless he is licensed under the Act".

movable property), s 10H (on further provisions relating to seizure of moveable property), s 10I (on obstruction of inspection and search), s 10J (on authority to act) and s 10K (on release of property seized).

Like the Pawnbrokers Act (Amendment) 2003, the amendments to the Moneylenders Act also introduced four new sections relating to evidence in court. These sections are ss 10L, 10M, 10N and 10O. Section 10L concerns evidence of an accomplice and agent provocateur. Section 10M provides for the protection of informers and information. Meanwhile s 10N provides for the admissibility of statement by accused persons and s 10O provides on evidence in short. The provision under s 10O is almost similar to s 34O of the Pawnbrokers Act.

Under s 10P, a moneylender and the borrower must enter into a moneylending agreement in the prescribed form. Any moneylender who contravenes this section shall be guilty of an offence under this Act and shall be liable to a fine of not less than RM10,000 but not more than RM50,000 or imprisonment for a term not exceeding five years or to both, and in the case of a second or subsequent offence shall also be liable to whipping in addition to such punishment. According to sub-s 3, any moneylending agreement which does not comply with the prescribed form shall be void and have no effect and shall not be enforceable.

Section 11 of Act 400 has been replaced with a new provision. Under the new s 11, moneylenders have to apply to the Registrar for an advertisement permit. The application for an advertisement permit is stated under the new s 11A. This provision is quite similar to s 13B of the Pawnbrokers Act, except that the fine under s 13B does not exceed RM20,000 compared to RM10,000 under s 11(1) of the Moneylenders Act.

Section 17(1) has also been amended and under the new provision, a moneylender is entitled to charge simple interest on the unpaid sum or installment calculated at the rate of 8% per annum from day to day. Under the new s 17A, the interest for a secured loan shall not exceed 12% per annum and interest for an unsecured loan shall

not exceed 18% per annum. Any moneylender who contravenes this provision shall be guilty of an offence under this Act and shall be liable to a fine not exceeding RM20,000 or to imprisonment for the term not exceeding 18 months or to both.²⁸

Under the new s 29B(1), any moneylender who harasses or intimidates a borrower shall be guilty of an offence under the Act and shall be liable to a fine not exceeding RM1,000 or to imprisonment for a term not exceeding 15 months or to both, and in case of a second or subsequent offence, shall also be liable to whipping in addition to such punishment. The provision under s 29B applies not only to licensed moneylenders but also to unlicensed moneylenders. Therefore it would be an effective measure to counter the problem of unlicensed moneylenders commonly known as 'Along'.

IV. Hire-Purchase Act 1967

Hire-Purchase is the most important branch of consumer credit. Malaysia did not have any local legislation which regulates this branch of consumer credit until 11 April 1968, when the Hire-Purchase Act 1967²⁹ came into force.³⁰ The Hire-Purchase Act 1967 clearly sets out the process of hire-purchase transactions from the beginning to the end. However, this statutory provision only applies for the goods stated in the First Schedule. The goods which are not within the First Schedule are governed by common law, which is usually based on freedom of contract. The limited application of the Hire-Purchase Act

²⁸ Under the new s 21(8), interest charged in respect of money lent by moneylender is excessive when the rate of that interest exceeds the maximum rate of interest permitted under this Act. Note that s 22 which concerns excessive interest has been repealed.

²⁹ Act 212.

³⁰ The Hire Purchase Act 1967 was first published in 1967 as Act No 24 of 1967. The Act was revised in 1978 and published as Laws of Malaysia Act No 212. The Act applies throughout Malaysia.

1967 to the goods within the First Schedule³¹ clearly shows that the Act is meant to protect the consumers,³² although certain non-consumer items such as goods vehicles³³ and buses were also included. Since common law is based on freedom of contract, the terms of the contract could be prejudicial to the hirer. It would be better if the protection under the Hire-Purchase Act could be extended, if not to all hire-purchase transactions, then to those transactions involving entrepreneurs who run small businesses. This is because they may need to enter into hire-purchase transactions to acquire goods such as refrigerators, photocopy machines and other types of machines. If government policies are to encourage small and medium sized businesses, then this Act should give some protection to them. This can be done by inserting into the First Schedule a credit limit for hire-purchase transactions, for example any goods not exceeding RM20,000 will be governed by the Act.³⁴ Although entrepreneurs are not consumers, they still need protection under the law as they are also vulnerable to the creditors.

A. *Hire-Purchase (Amendment) Act 2004*

The Hire-Purchase Act was amended by the Hire-Purchase (Amendment) Act 2004 (Act A1234).³⁵ Act A1234 came into force on 15 April 2005.³⁶ The amendment Act introduced a new method of terms charges, which is by way of variable terms rate. Under the new amendment, an owner shall provide an option to the hirer for the terms charges under a hire-purchase agreement to be either at a fixed

³¹ The Hire-Purchase (Amendment) Act 1992 had inserted "All consumer goods" to the new First Schedule.

³² The Ministry charged with the enforcement of the Act is the Ministry of Domestic Trade and Consumer Affairs.

³³ For goods vehicles, it only applies to goods vehicles which maximum permissible laden weight does not exceed 2540 kilograms.

³⁴ The New South Wales Act 1960-65 imposed no restriction in its application when the Act was introduced and the United Kingdom Consumer Credit Act 1974 imposed a monetary limit as suggested by the Committee on Consumer Credit under the Chairmanship of Lord Crowther, Cmnd 4596 (1971).

³⁵ Act A1234.

³⁶ PU(B) 119/05 757.

rate or at a variable rate.³⁷ A variable rate of terms charges shall be quoted at a margin percentage above the base lending rate.³⁸ According to s 4C(1B) of the Act, if in the hire-purchase agreement the terms charges are at a variable rate, the following items shall be specified in the hire-purchase agreement:³⁹

- (i) the number of instalments to be paid under the agreement by the hirer;
- (ii) the amount of each of these installments;
- (iii) the annual percentage rate of terms charges which shall be calculated in accordance with the formula set out in the Seventh Schedule; and
- (iv) the balance originally payable under the agreement.

According to the amendment, the owner may revise the base lending rate at any time during the continuance of the agreement.⁴⁰ Where the owner has revised the base lending rate, the rate and total amount of terms charges and the amount of each instalment or the number of instalments under the hire-purchase agreement shall be revised accordingly.⁴¹ However the Act does provide protection to the hirer in cases where the owner has revised the base lending rate. According to the Act, the owner who revised the base lending rate shall serve a notice to the hirer specifying the following:⁴²

- (i) the revised base lending rate;
- (ii) the revised rate of terms charges;
- (iii) the revised total amount of terms charges; and

³⁷ Section 6A(1) Hire-Purchase Act.

³⁸ "Base lending rate" means the minimum interest rate based, on the owner's cost of funds and other administrative costs.

³⁹ Based on the terms charges calculated in accordance with the base lending rate applicable at the time the hire-purchase is entered into.

⁴⁰ Section 6B(1) Hire-Purchase Act.

⁴¹ Section 6B(2) Hire-Purchase Act.

⁴² Section 6B(3) Hire-Purchase Act.

- (iv) the revised amount of instalments or the revised number of installments, as the case may be.

Where the owner has revised the base lending rate, the hirer may opt whether to retain the existing number of instalments and vary the amount of instalments or to retain the existing amount of instalments and vary the number of instalments.⁴³ This provision seems to provide the hirer with an alternative if the base lending rate has been revised.

The introduction of variable term charges is something new to the hire-purchase industry in Malaysia.⁴⁴ The decision as to whether to opt for traditional fixed rate term charges or a new variable term charges is in the hands of the hirer. However, the hirer should be aware of the danger of such variable term charges as it could trap them financially if the base lending rate increases rapidly.⁴⁵ However, according to the Hire-Purchase (Terms Charges) Regulations 1968, the terms charges in relation to a hire-purchase agreement shall not exceed 10% per annum in respect of all goods specified in the First Schedule.⁴⁶ It means that although the hirer chooses to opt for variable term charges, he is still protected under the Hire-Purchase (Terms Charges) Regulations 1968.

V. Conclusion

The invaluable contribution of the consumer credit industries to the country's economy, especially in providing credit to the society should be recognised. Although recent amendments in consumer credit laws

⁴³ Section 6C Hire-Purchase Act.

⁴⁴ The effect of the variable term charges to the hire-purchase industry is still unknown.

⁴⁵ If this happens, the hirer would probably suffer by paying more than what he had expected to pay.

⁴⁶ Besides that, under s 34(c), it is provided that if the hirer under the agreement which provides for term charges at variable rate is imposed to pay interest on any overdue installments at 2% above the prevailing rate of term charges, such provision shall be void and of no effect.

relating to transactions such as moneylending and pawnbroking seem to enhance protection for the consumer, more needs to be done. Further, all the amendments would be ineffective if there is lack of enforcement by the relevant authorities and cooperation from the public.

